

Message Text

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ACTION EUR-12

INFO OCT-01 ISO-00 DEAE-00 SCS-03 SCA-01 FBIE-00 TRSE-00
JUSE-00 SNM-02 H-01 DHA-02 L-03 /025 W
-----141110Z 021932 /10
P 141050Z MAR 77
FM AMEMBASSY PARIS
TO SECSTATE WASHDC PRIORITY 0547
INFO AMCONSUL NICE

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E.O. 11652: N/A

TAGS: SNAR, PFOR, CPRS, FR (BORNSZTEJN, GILBERT)
SUBJECT: GILBERT BORNSZTEJN, NACOTICS TRAFFICKER

1. ON MARCH 10, THE FRENCH POLICE ARRESTED A FRENCH CITIZEN BY THE NAME OF GILBERT BORNSZTEJN NEAR CAGNES SUR MER IN THE SOUTH OF FRANCE. HE HAS BEEN BROUGHT TO VERSAILLES WHERE HE IS BEING QUESTIONED WITH REGARD TO THE MURDER OF A CUBAN BY THE NAME OF ENRIQUE BERRERA WHOSE BODY WAS FOUND FLOATING IN THE SEINE WITH FIVE BULLET HOLES IN HIS HEAD ON JULY 6, 1976. POLICE HAVE REASON TO BELIEVE THAT THE TWO MEN HAD AT ONE TIME SHARED THE SAME APARTMENT AT VERSAILLES.

2. ON SEPT. 22, 1974 BORNSZTEJN AND BERRERA, ALONG WITH SEVERAL OTHER PERSONS, ESCAPED FROM THE FEDERAL HOUSE OF DETENTION IN NEW YORK CITY. THEY HAD BOTH BEEN SERVING SENTENCES ON NARCOTICS CHARGES. THE CHARGES INVOLVED A CONSPIRACY TO IMPORT AND DISTRIBUTE 118-1/2 KILOS OF HEROIN INTO THE U.S. FROM FRANCE. MOST OF THE SHIPMENT WAS SEIZED IN FRANCE BUT A PART OF IT WAS TAKEN TO THE U.S. BY AN AGENT WHO DELIVERED IT TO BORNSZTEJN AND OTHERS, INCLUDING
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BERRERA, IN NEW YORK.

3. BORNSZTEJN WAS FOUND GUILTY BY JUDGE WILLIAM PIERCE OF THE U.S. COURT FOR THE SOUTHERN DISTRICT OF NEW YORK ON NOVEMBER 18, 1972 AND SENTENCED ON JAN. 10, 1973 TO A \$50,000 FINE AND 25 YEARS IN PRISON WITH A THREE YEAR PAROLE FOLLOWING RELEASE.

IT WAS WHILE SERVING THIS SENTENCE THAT HE
ESCAPED FROM JAIL AND SUBSEQUENTLY FLED TO FRANCE.

4. AFTER HAVING BEEN INFORMED OF THE FOREGOING BY DEA,
THE CONSUL GENERAL DISCUSSED THE CASE WITH MME BACRO
OF THE JUSTICE MINISTRY WITH WHOM FRENCH
NARCOTICS DIRECTOR LE MOEL HAD ALREADY BEEN
IN TOUCH. MME BACRO STATED THAT BORNSZTEJN COULD NOT
BE EXTRADITED BECAUSE FRENCH LAW CATEGORICALLY PRO-
HIBITS THE EXTRADITION OF FRENCH CITIZENS. HOWEVER,
SHE ADDED THAT THE FRENCH PENAL CODE (SHE REFERRED
SPECIFICALLY TO ARTICLES 689 AND 691) PERMITS THE
FRENCH TO TRY THEIR CITIZENS FOR OFFENSES COMMITTED
ABROAD UNDER CERTAIN CIRCUMSTANCES. IN THE CASE OF
WHAT THE FRENCH CALL "CRIMES" THE CRITERIA ARE MORE
LIBERAL THAN IN THE CASE OF WHAT THEY CALL "DELITS",
A LESSER OFFENSE WHICH APPLIES TO NARCOTICS
TRAFFICKING.

5. IN THE BORNSZTEJN CASE MME BACRO THOUGHT IT MIGHT
BE POSSIBLE TO TRY HIM IN FRANCE FOR THE OFFENSE
HE COMMITTED IN THE U.S. (WHICH OF COURSE HAD A
"FRENCH CONNECTION"). NO CHARGES HAVE YET BEEN
BROUGHT AGAINST HIM IN FRANCE, ALTHOUGH IT IS LIKELY
HE WILL BE DETAINED FOR SOME TIME BECAUSE HE

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APPARENTLY WAS IN POSSESSION OF SOME FAKE DOCUMENTS

(HE WAS ALSO, INCIDENTALLY, IN POSSESSION OF 80,000 FRANCS AND U.S. \$249,000 IN CASH AT THE TIME OF HIS ARREST IN FRANCE).

6. MME BACRO STATED THAT BEFORE THE JUSTICE MINISTRY COULD ACT, AN "OFFICIAL DENUNCIATION" ("DENONCIATION OFFICIELLE") WOULD HAVE TO BE MADE BY THE U.S. GOVERNMENT THROUGH DIPLOMATIC CHANNELS. THIS INSTRUMENT WOULD HAVE TO CONTAIN OR BE ACCOMPANIED OR FOLLOWED BY DOCUMENTATION SETTING FORTH ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CASE. THE FRENCH WOULD THEN, IN EFFECT, RETRY BORNISZTEJN IN FRANCE. THEY CANNOT MERELY EXECUTE THE REMAINDER OF THE SENTENCE IMPOSED UPON HIM IN THE U.S. WHILE MME BACRO DID NOT MENTION IT, IT OCCURS TO US THAT THERE MIGHT BE A PROBLEM AS REGARDS THE FRENCH STATUTE OF LIMITATIONS.

7. BEFORE DELVING ANY DEEPER INTO THIS RATHER COMPLEX LEGAL PROCEDURE, WITH WHICH NO ONE ON THE EMBASSY STAFF HAS HAD ANY PREVIOUS EXPERIENCE, WE WOULD LIMITED OFFICIAL USE

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APPRECIATE LEARNING:

- A) WHETHER U.S. LAW PERMITS SUCH A PROCEDURE TO BE FOLLOWED; IF SO,
- B) WHETHER THE DEPARTMENT WISHES TO PURSUE IT;
- C) WHETHER THE DEPARTMENT CAN EXPLAIN TO US HOW IT WORKS, FOR EXAMPLE BY CITING SOME PRECEDENT CASE WITH FRANCE OR SOME OTHER COUNTRY; AND
- D) HOW WE SHOULD PROCEED IF THE DEPARTMENT WANTS US TO DO SO.

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